

FACTSHEET

TITLE: **SPECIAL PERMIT NO. 2030, Finigan View Community Unit Plan**, requested by Lyle Loth of ESP on behalf of Pearle F. Finigan, consisting of 8 dwelling units, with associated waiver requests, on property generally located northeast of the intersection of N. 84th Street and Bluff Road.

STAFF RECOMMENDATION: Conditional approval, including approval of all waiver requests.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 08/20/03
Administrative Action: 08/20/03

RECOMMENDATION: Conditional Approval (9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes').

FINDINGS OF FACT:

1. This is a proposal for a community unit plan in AG zoning, for 8 residential acreage lots, with gravel private street and individual sewer and water. A dwelling unit bonus is not being requested. The applicant has requested the following waivers:
 - requirement to submit a preliminary plat;
 - requirement that final plats be based upon preliminary plats;
 - requirement that final plats accepting the dedication of public streets and private roadways go to the Planning Commission;
 - yard setbacks; minimum lot area; ornamental street lighting; sidewalks; street trees; landscape screens and block length.
2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.4-5, concluding that the proposal is to "cluster" the allowed dwelling units; the requested waivers are typical of a rural subdivision and are provided for in the code; and no bonuses are being requested. The proposal is in general conformance with the Comprehensive Plan; however, the build-through provisions are not addressed because there is currently no standard to apply. The previous Mayor had established a policy with the adoption of the Plan in June, 2002, to look favorably on "clusters" like this until build-through standards were developed.
3. The applicant's testimony is found on p.10-11 and 12. The applicant agreed with the staff recommendation and conditions of approval.
4. Testimony in opposition by Rochelle Bray is found on p.11, and the letter submitted by her attorney, Andrew M. Loudon, is found on p.25-26. Ms. Bray alleges that this community unit plan should not be approved because she will be filing a lawsuit of adverse possession on a portion of the property. The City Attorney gave authority to the Planning Commission to proceed to take action on this community unit plan. The proposed acreage development is not directly next to the area in dispute for adverse possession. The area in dispute is being reserved for agricultural uses in the community unit plan. If there would be a change of ownership in the future due to the adverse possession, that portion of the property could be eliminated from the community unit plan at that time. (See Minutes, p.11-12).
5. The applicant's response to the opposition is found on p.12.
6. On August 20, 2003, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend conditional approval. The conditions of approval are found on p.5-9.
7. The Site Specific conditions of approval required to be completed prior to scheduling this application on the Council agenda have been satisfied and the revised site plan is attached (p.15-17).

FACTSHEET PREPARED BY: Jean L. Walker
REVIEWED BY:
REFERENCE NUMBER: FS\CC\2003\SP.2030

DATE: October 13, 2003
DATE: October 13, 2003

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for August 20, 2003 PLANNING COMMISSION MEETING

P.A.S.: Special Permit #2030 Finigan View Community Unit Plan

PROPOSAL: A community unit plan for 8 residential units with waiver to the subdivision ordinance requiring a preliminary plat, to allow the Planning Director to approve administrative final plats and the approval of administrative final plats accepting the dedication of streets and private roadways are requested.

LOCATION: Northeast of the intersection of North 84th Street and Bluff Road.

WAIVER REQUESTS:

1. Requirement to submit a preliminary plat.
2. Requirement that final plats be based upon preliminary plats.
3. Requirement that final plats accepting the dedication of public streets and private roadways go to the Planning Commission.
4. Yard setbacks.
5. Minimum lot area
6. Ornamental street lighting.
7. Sidewalks.
8. Street trees.
9. Landscape screens.
10. Block length.

LAND AREA: 158.30 acres, more or less.

CONCLUSION: This is an Ag Community Unit Plan, proposing to “cluster” the allowed dwelling units to 8 acreage lots. Waivers requested are typical of a rural subdivision and are provided for in the code. No bonuses are being requested.

RECOMMENDATION:

Special Permit #2030

Conditional Approval

Waivers

- | | |
|---|----------|
| 1. Requirement to submit a preliminary plat: | Approval |
| 2. Requirement that final plats be based upon preliminary plats: | Approval |
| 3. Requirement that final plats accepting the dedication of public streets and private roadways go to the Planning Commission | Approval |
| 4. Yard Setbacks: | Approval |
| 5. Minimum lot area: | Approval |
| 6. Ornamental lighting | Approval |
| 7. Sidewalks | Approval |

8.	Street trees	Approval
9.	Landscape screens	Approval
10.	Block length	Approval

GENERAL INFORMATION

LEGAL DESCRIPTION: Lot 4 I.T. located in the SW 1/4 and NW 1/4 of the SW 1/4 of Section 14-11-7; and the NE 1/4 of the SW 1/4 of Section 14-11-7; and Lot 11 I.T.; located in the SW 1/4 of 14-11-7; Lancaster County, Nebraska.

EXISTING ZONING: AG Agriculture

EXISTING LAND USE: Farmland

SURROUNDING LAND USE AND ZONING:

North:	Farmland	AG
South:	Farmland, one house	AG
East:	Farmland	AG
West:	Farmland, one house	AG

HISTORY: Zoned AG in the 1979 zoning update

COMPREHENSIVE PLAN SPECIFICATIONS: The 2025 Comprehensive Plan shows this area as Agriculture, Tier III. A cluster is permitted by special permit in the AG district. In relation to clustering in the Agriculture area, the Comprehensive Plan states:

“New ‘urban acreage’ development should only be permitted in Tier II and Tier III area of Lincoln and near towns under higher design standards based upon a “buildthrough” model and without use of sanitary improvement districts. The “build through” design standards should address, along with other items deemed necessary to the study:

- a preliminary plan lot layout that accommodates first phase low density acreages with rural water and sewer systems. The preliminary plat would also show future lot splits as a second phase to permit the urban infrastructure to be built through and urbanization to occur if and when annexed by a city or town is deemed appropriate. The future lot splits will increase density in an urban form and provide income to property owners to defray the increases in city taxes, services and infrastructure costs;
- a lot layout that meets the various elements of the Comprehensive Plan; and
- a development agreement that runs with the land and acknowledges that the acreage development (i) is not entitled to extra buffering protection greater than the acreage property lines from existing agricultural practices and from future urbanization and (ii) waives any future right to protest the creation of lawful centralized sanitary sewer, water and paving special assessment districts or other lawful financing methods at a later date when urbanization is appropriate.

When the independent study to quantify and qualify the positive and negative economics of acreage development is completed, the county should determine if an impact fee or other development exactions are needed to be sure acreage development is paying its “fair share” of costs. The study should include a review of policy issues and options such as the build-through concept, lot size, acreage standards, acreages and town relationships, acreages and sensitive areas, agriculture, acreage clusters, desired acreage population, acreage size and land use consumption and AGR zoning. (page F79)

UTILITIES: None available.

TOPOGRAPHY: This is generally rolling land, draining to the southeast.

TRAFFIC ANALYSIS: Access to the site is provided by Bluff Road and North 84th Street. Both are county gravel roads. Neither is planned for future paving. The Plan does not call for 120' ROW at this location.

PUBLIC SERVICE: This is in the Waverly Rural Fire District, Waverly School District # 145 and Norris Public Power District.

REGIONAL ISSUES: Expansion of the acreage areas. Clustering to preserve farm land. Buildthrough in the growth tiers.

ENVIRONMENTAL CONCERNS: There are no identified Historic resources, The soil rating is 3.4 on a scale of 1-10 where 1-4 is prime soil. This is prime soil. This is within one mile east of the new LES peaking facility, the landfill and the northeast sewage effluent lagoons.

AESTHETIC CONSIDERATIONS: na

ALTERNATIVE USES: All uses allowed in the AG district. Seven 20+ acre lots.

ANALYSIS:

1. This request is for a Special Permit for a Community Unit Plan for 8 acreage residential lots. A gravel private street is proposed and individual sewer and water is proposed. A dwelling unit bonus is NOT being requested.
2. This request is in general conformance with the Comprehensive Plan. However, the buildthrough provisions are not addressed because there is currently no standard to apply. The clustering and set aside of a large outlot with no restrictive easement allows future growth. Since "buildthrough" standards have not been developed at this time, the Planning Department is following the Mayoral policy of June 11, 2002 where Mayor Wesely noted this type of development was allowed.
3. A waiver to the minimum lot area of 20 acres is requested. This is required to accomplish the clustering to 3 acre lots.
4. Waivers are requested for street lights, sidewalks, block length, street trees, and screening. These are typical waivers required, provided for and appropriate for agriculture/acreage clusters.
5. Pursuant to §26.31.015 "Coordinating Subdivision and Community Unit Plan, Planned Unit Development, Special Permit and Use Permit" of the Land Subdivision Ordinance the applicant requested a waiver to the requirement for a preliminary plat, and to allow the Planning Director to approve administrative final plats and the approval of administrative final plats accepting the

dedication of streets and/or private roadways. In an effort to streamline the development review process and coordinate the review of the special permit and preliminary plat, the Planning Department supports this waiver request.

6. The County Engineers memo of July 21, 2003 notes several corrections required.
7. LES is requesting easements.
8. Health Department notes the water supply is adequate and the lots are sufficient in size to allow lagoons or non-standard on-site wastewater systems if required.
9. Public Works notes some questions. See attached report. The lots noted have 340' of frontage and access to a residence due to the culverts should not be a problem.

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department office and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:

1.1 Revise the site plan to:

- 1.1.1 Include in the waiver notes the waiver of block length
- 1.1.2 Show a location map.
- 1.1.3 Show a signed surveyors certificate.
- 1.1.4 Revise Note 6 to reference city/county standards.
- 1.1.5 Revise Note 8 to reference LES, not Norris.
- 1.1.6 Show an acceptable street name for the private street.
- 1.1.7 Revise Note 9 to provide an exception for farm field access, not an exclusion.
- 1.1.8 Amend note 10 to reflect "whichever is lesser" for the rear yard.
- 1.1.9 Show the easements required by LES in their memo of July 25.
- 1.1.10 Show the revisions required in the County Engineers memo dated Jul21, 2003;

1) Dedication of 50' of right of way with a 10' clear area designated on Lots 1 and 8.

- 2) A profile of North 84th Street shall be submitted showing adequate sight distance of the private roadway.
- 3) Private roadway is not named.
- 4) Intersection radius at North 84th Street shall be 50.00'.
- 5) Culverts shall have a flared-end sections or concrete headwalls on inlet.
- 6) Permanent easements shall be dedicated for culvert ends that extend beyond the road right-of-way.
- 7) The street profile has elevations identified as F.L. that are incorrect.
- 8) The 100 year headwater for the culvert at Sta. 8+80 is within 0.5 foot of the shoulder at the low point of the road at Sta. 9+45. The inlet elevation should be field verified.
- 9) The description of the section corners on the site plan have the wrong township.
- 10) The distance shown for the east line of Lot 3, Irregular tract, is incorrect.
- 11) General Note 9 shall include relinquishment of access to Bluff Road, excluding farm operations.

1.1.11 Revise the profile for the proposed private roadway to extend for 300' past the proposed end of surfacing to show future grade.

1.2 Show the easements requested by LES in their July 25, 2003 review.

2. This approval permits up to 8 dwelling units and the following modifications and waivers:

2.1 Minimum lot area

2.2 Yard setbacks

2.3 Ornamental lighting

2.4 Sidewalks

2.5 Street Trees

2.6 Landscape trees

2.7 Requirement to submit Preliminary Plat.

- 2.8. Grant authority to the Planning Director to approve an administrative final plat based upon the approved CUP.
- 2.9 Grant authority to the Planning Director to approve an administrative final plat accepting the dedication of private roadways.
- 2.10 The waiver of the preliminary plat shall only be effective for a period of ten years from the date of the city's approval, and shall be of no force or effect thereafter. If any final plat on all or a portion of the approved community unit plan is submitted five years or more after the effective date of the community unit plan, the city may require that a new community unit plan be submitted, pursuant to all the provisions of Section 26.31.015. A new community unit plan may be required if the subdivision ordinance, the design standards, or the required improvements have been amended by the city; and as a result, the community unit plan as originally approved does not comply with the amended rules and regulations.

3. Administrative Final Plats will be approved by the Planning Director after:

- 3.1 The subdivider has completed or posted a surety to guarantee the completion of the private roadway improvements, drainage facilities, land preparation and grading, sediment and erosion control measures, drainageway improvements, temporary turnaround and barricades, and street name signs.
- 3.2 The subdivider has signed an agreement that binds the subdivider, its successors and assigns:
 - 3.2.1 To submit to the Director of Public Works a plan showing proposed measures to control sedimentation and erosion and the proposed method to temporarily stabilize all graded land for approval.
 - 3.2.2 To complete the private improvements shown on the Community Unit Plan.
 - 3.2.3 To maintain the outlots and private improvements on a permanent and continuous basis. However, the subdivider may be relieved and discharged of this maintenance obligation upon creating in writing a permanent and continuous association of property owners who would be responsible for said permanent and continuous maintenance. The subdivider shall not be relieved of such maintenance obligation until the document or documents creating said property owners association have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds.
 - 3.2.4 To submit to the lot buyers and home builders a copy of the soil analysis and water study.
 - 3.2.5 To pay all improvement costs.

- 3.2.6 To comply with the provisions of the Land Preparation and Grading requirements of the Land Subdivision Ordinance.
- 3.2.7 To protect the trees that are indicated to remain during construction and development.
- 3.2.8 To properly and continuously maintain and supervise the private facilities which have common use or benefit, and to recognize that there may be additional maintenance issues or costs associated with providing for the proper functioning of storm water detention/retention facilities as they were designed and constructed within the development, and that these are the responsibility of the land owner.
- 3.2.9 To relinquish the right of direct vehicular access to 84th Street except for the street on Outlot "B" and a farm access to Outlot "A" and to Bluff Road except for farm access to Outlot A.

General:

- 4. Before receiving building permits:
 - 4.1 The permittee shall have submitted a revised and reproducible final plan including 6 copies.
 - 4.2 The construction plans shall comply with the approved plans.
 - 4.3 Administrative Final Plats shall be approved by the Planning Director.

Standard:

- 5. The following conditions are applicable to all requests:
 - 5.1 Before occupying the dwelling units all development and construction shall have been completed in compliance with the approved plans.
 - 5.2 Before occupying this Community Unit Plan, City/County Health Department is to approve the water and waste water systems
 - 5.3 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.
 - 5.4 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 5.5 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

- 5.6 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

Mike DeKalb
Planner

August 07, 2003

**APPLICANT/
OWNER:**

Pearle F. Finigan
6321 "A" Street
Lincoln, NE 68510
(402) 483 -4657

CONTACT:

Lyle Loth
ESP
601 Old Cheney Road, Suite A1
Lincoln, NE 68512
474-6311

SPECIAL PERMIT NO. 2030, FINIGAN VIEW COMMUNITY UNIT PLAN

PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 20, 2003

Members present: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing due to a letter received in opposition.

Mike DeKalb of Planning staff submitted a letter from Attorney Andrew M. Loudon, on behalf of Rochelle J. Bray, an adjacent property owner. It is their opinion that Ms. Bray actually controls a portion of the property in this community unit plan by adverse possession. However, the City Attorney does not believe this has any effect on the application before the Commission and that it would be a civil matter between the two parties.

Steward noted that the property is located approximately one mile from the LES peaking facility, the landfill and northeast sewage lagoons, yet there is no expression of concern about this proximity. DeKalb suggested that the peaking facility would not be different than the Rokeby peaking station on S.W. 12th and W. Denton with acreages right next to it, other than some light at night. Occasionally, there might be noise but it would not be too much of an impact. As far as the landfill, most of the traffic is coming in on 56th and 70th and it is his understanding from the neighbors that they do not notice it that much, and this development is one mile away. As far as the city's effluent lagoons for the northeast treatment plant, Dekalb believes the city is going to begin using that effluent for cooling for the peaking station. This could change the characteristics and he believes there will be improvement. He believes this development is far enough away that there will be no direct impact. Steward assumes there is no evidence of any water contamination from either the landfill or lagoon. DeKalb concurred.

Proponents

1. Mark Hunzeker appeared on behalf of **Pearle Finigan**, the applicant, and agreed with the staff recommendation and conditions of approval. The property is in close proximity to a similar subdivision the owner did some time ago. The water is good and plentiful. There have been no complaints with respect to the landfill or the potential odors from the treatment facility. Finigan has experienced good market in that area and has had no resistance. With respect to the claim by Ms. Bray, Hunzeker also suggested that it has no effect on what the Planning Commission is doing here. The only claim, based on the letter, is that they allegedly possess ½ acre abutting the property that is owned by Ms. Bray. The aerial photograph shows that the parcel owned by Ms. Bray is in the southwest corner of this quarter section, containing approximately one acre. Ms. Bray is claiming that she has adversely possessed as much as ½ acre surrounding that property. If they file a lawsuit and if they are successful, that would reduce the total land area only by ½ acre and will not affect the density calculations of this community unit plan.

Steward noted that the land is currently farmed and rated as prime quality. Is it the intent of the owner, except for the cluster development, to continue to farm? Hunzeker answered in the affirmative. The applicant did not seek any bonuses for preservation of the agricultural land so the number of units being requested is the permissible number.

Opposition

1. Rochelle Bray, 10500 No. 84th Street, which is approximately the corner of 84th & Bluff Road, testified in opposition. She requested that the Planning Commission delay action on this community unit plan because she will be filing a lawsuit of adverse possession. She has owned the property for 18 years. The land that is in question today is a greenbelt property—not ideal farm quality. She reminded the Commission that less than 5 years ago, the Commission also authorized a rezoning of agricultural land to residential located on the north side of Waverly, with two subdivisions now in progress. She requested that the Commission delay any action on this community unit plan. She did contact the Finigans on several occasions. The letter was sent certified mail and was signed for on August 2, 2003, allowing the Finigans 14 days to respond. The Finigans have not responded so she will go forward with a lawsuit claiming the .92 acres as her own.

Bills-Strand noted that the proposed cluster development is clear up in the northwest corner, quite a distance from Ms. Bray's property in the southwest corner. Bills-Strand does not believe that what Ms. Bray is trying to adversely possess is contained in the development. Ms. Bray disagreed. The applicant's survey of the entire property includes her property.

Larson does not believe the proposal will affect her property. Ms. Bray indicated that the litigation cannot go forward if there is action on this development at this time. She lived in the country and worked very hard to provide and have what she has. Changing the land would put her into a residential area of 3.5-acre lots and this would definitely change the abstract of the land as it exists today. There is another subdivision in progress just across the road.

Larson noted that the actual lots being proposed would be approximately 1/8th of a mile north of Ms. Bray's property. Ms. Bray agreed, but she does not believe that is very far away.

Ms. Bray also pointed out that her water has tested poorly and she had to install a \$10,000 water distiller system in order to have good drinking water.

Steward asked the City Attorney to respond. Rick Peo advised that if there is a claim of adverse possession, that is for a court to determine based upon 10 years of occupancy of the property hostile to the owner. It is his understanding that the proposed acreage development is not directly next to the area in dispute, but reserved for agricultural, so if at a subsequent time there would be change of ownership, that portion of the property could be eliminated from the community unit plan and not have an effect on the continuing use of the acreage development. He sees no problem with this body going forward. It appears that the party claiming adverse possession also dislikes the concept of the community unit plan.

Response by the Applicant

Hunzeker pointed out that the distance from the property in question to the nearest property of any of the lots proposed is more like 1800 feet. Page 45 of the agenda shows that the Bray property is in the

extreme southwest corner of this quarter section. The quarter section is ½ mile north-south, so that it is more than 1/4th (almost ½) mile from the north property line of Ms. Bray's lot and the only property affected by the litigation would be the large outlot which has no bearing on the density calculations. He also suggested that the approval of this CUP will not have any effect on her ability to file a lawsuit. The approval of this subdivision will not change the title or the likelihood of success of her lawsuit in any way. The record title holder is Pearle Finigan and he has no desire to engage in extended litigation. Hopefully, there is some means of getting this resolved without litigation.

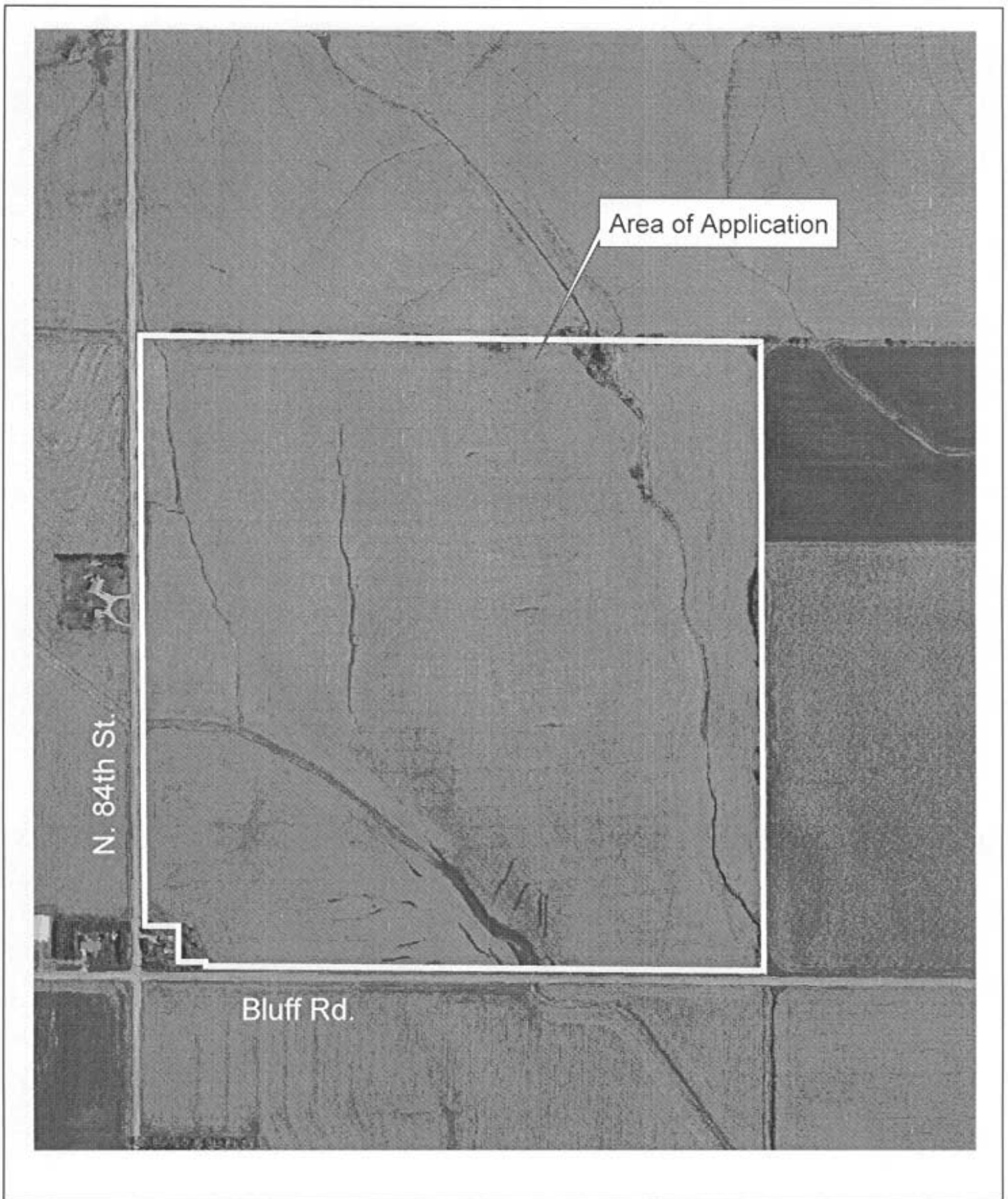
Taylor asked Rick Peo if he agreed with Hunzeker's testimony that this development will have absolutely no effect on positioning of the Bray property. Peo could not speak to Ms. Bray's claims; however, if the development were to go forward and if Ms. Bray is found to be the owner of part of the property, the CUP would have to be amended to eliminate that portion of the property from the community unit plan. There is enough acreage to accomplish the requested purpose, with or without that section of the property. He does not believe this subdivision will affect that situation. He does not believe this would prevent her from bringing litigation forward.

Hunzeker believes that if the adverse possession claim is successful, there would need to be an administrative amendment to the community unit plan to exclude that portion of the property.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 20, 2003

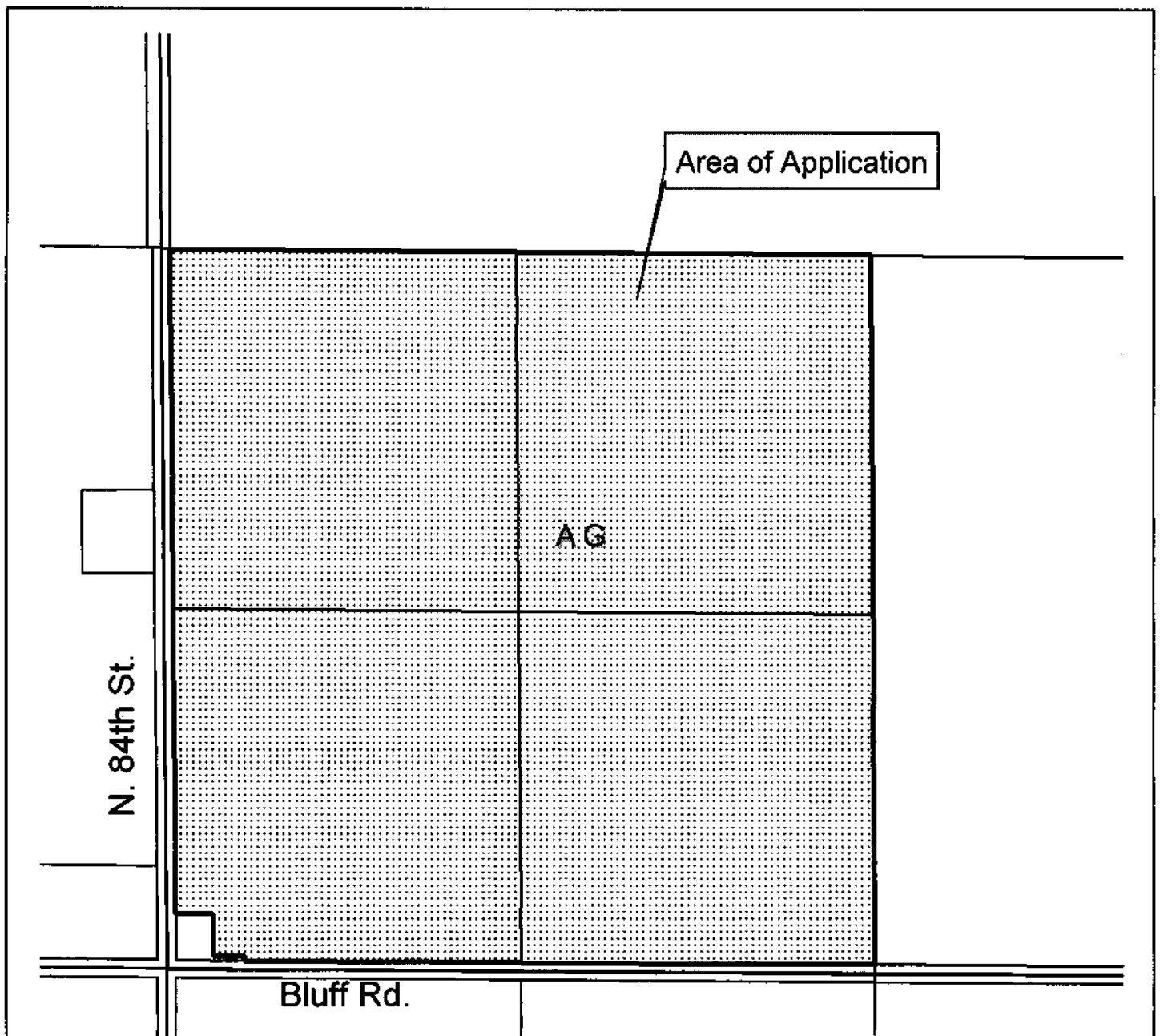
Schwinn moved to approve the staff recommendation of conditional approval, seconded by Larson and carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes'.



**Special Permit #2030
N. 84th St. & Bluff Rd.
Finigan View CUP**



013

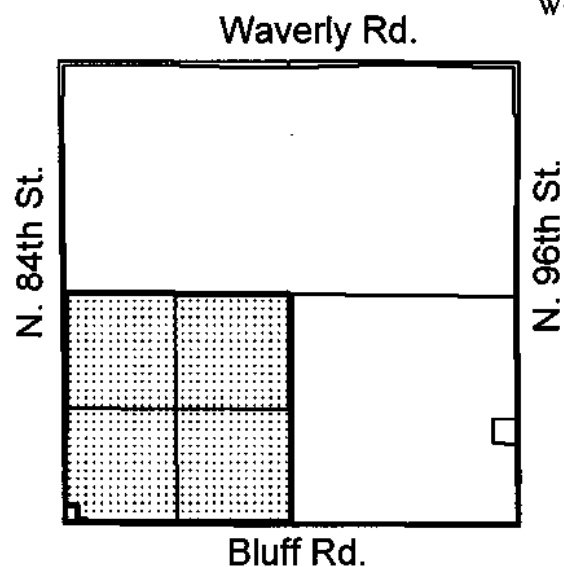
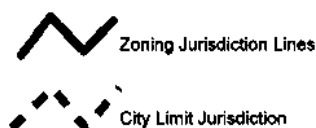


Special Permit #2030
N. 84th St. & Bluff Rd.
Finigan View CUP

Zoning:

One Square Mile
 Sec. 14 T11N R7E

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-7 Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-6 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District



014

**Special Permit #2030
N. 84th St. & Bluff Rd.
Finigan View CUP**



GENERAL NOTES

1. Sewage treatment will be provided by individual lot owners. Lagoons may be allowed and will not be prohibited by covenant. Due to soil types and slopes, lagoons or engineered waste treatment systems may be required.
2. Water will be provided by individual wells on each lot.
3. The developer agrees to comply with the Design Standards of the City of Lincoln for erosion and sedimentation control during and after land preparation.
4. Contours are Mean Sea Level (NAVD 88 Datum).
5. Interior streets are Private and have a right-of-way width of 60 feet.
6. Interior streets shall be surfaced with 3" rock & 1" gravel in accordance with City/County Standards.
7. All interior intersection radii shall be 30 feet. 22' Type III barricades shall be installed at temporary dead ends along with 30' temporary turnarounds. Grading shall extend around the temporary turnarounds.
8. Utility easements will be provided as required by Lincoln Electric System, Altel, Time Warner Entertainment, and Aquila.
9. Direct vehicular access to N. 84th Street ~~is hereby relinquished~~ *and Bluff Road* except at Llana Lane and also farm equipment access to Outlot 'A'.
10. Setbacks shall be as follows:
 - A. Front Yard 50 feet
 - B. Side Yard 15 feet
 - C. Rear Yard ~~Whichever~~ Lesser of 50' or 20% Depth
 - D. 10' Setback along 84th St. frontage of Lots 1 & 8 to allow existing trees and structures to remain. Any new trees and structures shall not be allowed in this area.
11. The following waivers to the Land Subdivision Ordinance are hereby relinquished:
 - A. Ornamental Lighting
 - B. Sidewalks
 - C. Street Trees
 - D. Landscape Screens
 - E. Storm Water Detention
 - F. Block Length
 - G. Waive the Preliminary Plat process.
 - H. Grant authority to the Planning Director to approve an Administrative Final Plat without a Preliminary Plat.
 - I. Grant authority to the Planning Director to approve an Administrative Final Plat even though there are public streets or private roadways.
12. All of the 8 building sites will be outside of the 100-Year storm limits.
13. The developer shall install street identification signs; 1 STOP sign, and 1 No Outlet sign.
14. Notice to potential buyers; Rural standards for roads are to be maintained and one access per lot will be permitted.

LEGAL DESCRIPTION

ALL of SW 1/4 excluding Lot 3, located in T. 11 N., R. 7 E., of the 6th P.M., county, Nebraska

Special Permit #2030
N. 84th St. & Bluff Rd.
Finigan View CUP

Revised
 10-8-03



File No. 03-0260
July 17, 2003

Mike Dekalb
Planning Department
555 S. 10th Street
Lincoln, NE 68508

LYLE L. LOTH, P.E./L.S.

Suite A - 601 Old Cheney Road
Lincoln, NE 68512

Phone (402) 421-2500
Fax (402) 421-7096

Email: lyle@espeng.com

Re: Finigan View Community Unit Plan

Dear Mike:


On behalf of Pearle Finigan, we submit herewith the required plans for the referenced project.

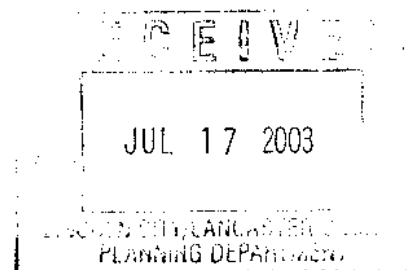
In addition, we have submitted an Ownership Certificate and the filing fee of \$355.00. We hereby request the following waivers for this project:

- (1) Ornamental Lighting
- (2) Sidewalks
- (3) Street Trees
- (4) Landscape Screens
- (5) Waive the Preliminary Plat process
- (6) Grant the Planning Director authority to approve an Administrative Final Plat conforms to the Special Permit for the Community Unit Plan.
- (7) Grant the Planning Director authority to approve Administrative Final Plat even though there are public streets or private roadways.

We have submitted water test data to Jerry Hood at the Lincoln Lancaster County Health Department, which indicates that there is an adequate supply of potable water available to serve this project.

E-S-P, Inc.
Engineering-Surveying-Planning


Lyle L. Loth, P.E.





Lancaster


County

Engineering

Department

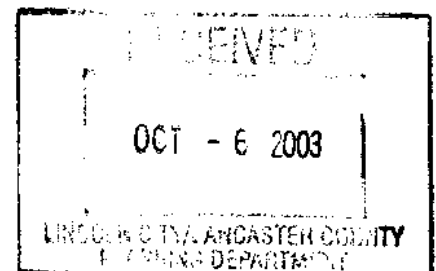
DON R. THOMAS - COUNTY ENGINEER

DEPUTY - LARRY V. WORRELL
COUNTY SURVEYOR

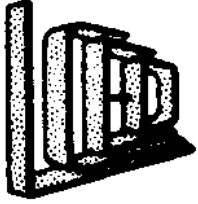
DATE: October 3, 2003
TO: Mike DeKalb
Planning Department
FROM: Larry V. Worrell 
County Surveyor
SUBJECT: SPECIAL PERMIT #2030 - FINIGAN VIEW CUP

Upon review, this office has no direct objections to this submittal.

LVW/DP/cm



019



Lancaster


County

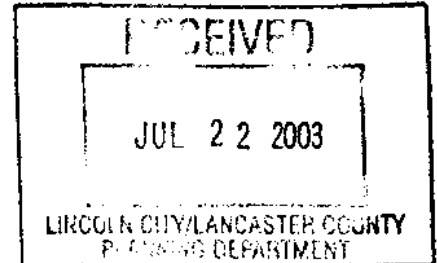
Engineering

Department

DON R. THOMAS - COUNTY ENGINEER

DEPUTY - LARRY V. WORRELL
COUNTY SURVEYOR

DATE: July 21, 2003
TO: Mike DeKalb
Planning Department
FROM: Larry V. Worrell 
County Surveyor
SUBJECT: FINIGAN VIEW - CUP



Upon review, this office would have the following comments:

- 1) Dedication of 50' right-of-way with a 10' clear area designated on Lots 1 and 8
- 2) A profile of North 84th Street shall be submitted showing adequate sight distance for private roadway
- 3) Private roadway is not named
- 4) Intersection radius at North 84th Street shall be 50.00'
- 5) Culverts shall have flared-end sections or concrete headwalls on inlet
- 6) Permanent easements shall be dedicated for culvert ends that extend beyond the road right-of-way
- 7) The street profile has elevations identified as F.L. that are incorrect
- 8) The 100 year headwater for the culvert at Sta. 8+80 is within 0.5 foot of the shoulder at the low point of the road at Sta. 9+45. The inlet elevation should be field verified
- 9) The description of the section corners on the site plan have the wrong township
- 10) The distance shown for the east line of Lot 3, irregular tract, is incorrect
- 11) *General Note 9* shall include relinquishment of access to Bluff Road, excluding farm operations

LVW/DP/cm

SUBDIV.WK/Finigan View CUP.Mem

020

**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION**

TO: Mike DeKalb

DATE: July 29, 2003

DEPARTMENT: Planning

FROM: Chris Schroeder

ATTENTION:

DEPARTMENT: Health

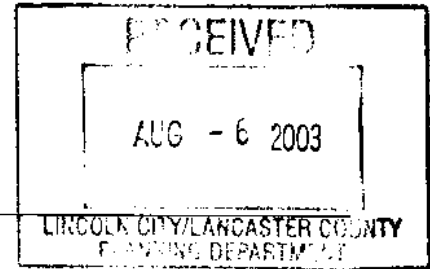
CARBONS TO: EH File
EH Administration

SUBJECT: Finigan View
SP #2030

The Lincoln-Lancaster County Health Department (LLCHD) has reviewed the proposed Finigan View development with the following items noted:

- All soil on the propose site is Sharpsburg.. Sharpsburg soil has severe limitations for the installation of standard septic systems. *The applicant has addressed this issue in the general notes.* Lagoons or non-standard on-site wastewater systems may be required.
- Information provided to the LLCHD by the applicant indicate that an adequate supply of potable water exists for this project.
- All wind and water erosion must be controlled during construction. The Lower Platte South Natural Resources District should be contacted for guidance in this matter. *The applicant has addressed this issue in the general notes.*
- During the construction process, the land owner(s) will be responsible for controlling off-site dust emissions in accordance with Lincoln-Lancaster County Air Pollution Regulations and Standards Article 2 Section 32. Dust control measures shall include, but not limited to application of water to roads, driveways, parking lots on site, site frontage and any adjacent business or residential frontage. Planting and maintenance of ground cover will also be incorporated as necessary.

M e m o r a n d u m



To: Mike DeKalb, Planning Department
From: ^{CB} Chad Blahak, Public Works and Utilities
Subject: Finigan View Special Permit
Date: August 5, 2003
cc:

Engineering Services has reviewed the special permit for Finigan View, located approximately ½ mile north of Bluff Road east of North 84th Street, and has the following comments:

- The lot layout as shown creates two lots, Lot 6 & Lot 8, that have culvert outlets in the center of the lot, making designing an access to the road difficult and creating rather undesirable lots. Consideration needs taken to adjust the lot layout in order to place the culverts at lot lines.
- The proposed private roadway shown is longer than 1320 LF creating a block longer than the 1320' allowable block length.
- The profile for the proposed private roadway needs to be extended for 300' past the proposed paving to show future grade.



UTILITIES DEPARTMENT

PUBLIC WORKS AND



MEMORANDUM

Da

Fro

Subj

July 28, 2003

Mike DeKalb
Ben Higgins, Chad Blahak

Devin Biesecker

Finigan View

Watershed Management has reviewed the two sheet plan set for the Finigan View Preliminary Plat stamped July 17, 2003 and has the following comments.

1. Lots 6 and 8 each have a culvert outlet centered on the lot along with a drainage swale through the middle of each lot. Since the middle of the lot is the most likely place for building a home the culvert and drainage swale in the middle may make the lots undesirable and could also cause problems with drainage after the homes are built. Moving the drainage and culverts to the lot lines by grading or by changing the layout of lots is recommended.



INTER-DEPARTMENT COMMUNICATION

DATE July 25, 2003

TO Mike DeKalb, City Planning

FROM Sharon Theobald
(Ext. 7640)

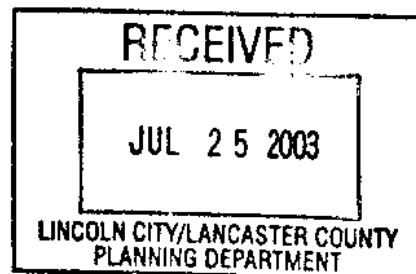
SUBJECT DEDICATED EASEMENTS
Special Permit #2030
DN #125N-85E

Attached is the Site Plan for Finigan View.

In reviewing the dedicated transmission line or other electrical easements shown on this plat, LES does not warrant, nor accept responsibility for the accuracy of any such dedicated easements.

ALLTEL, Time Warner Cable, and the Lincoln Electric System will require the additional easements marked in red on the map.

ST/nh
Attachment
c: Terry Wiebke
Easement File



BAYLOR, EVNEN, CURTISS, GRIMIT & WITT, L.L.P.SUITE 1200, 206 SOUTH 13TH STREET
LINCOLN, NEBRASKA 68508-2077ROBERT T. GRIMIT
DONALD R. WITT
M. DOUGLAS DEITCHER
WALTER E. ZINK, II
RANDALL L. GOYETTE
STEPHEN S. GRALY
GAR S. PERRY
DALLAS D. JONES
JILL GRADWOHL SCHROEDER
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ANDREW M. LOUDON
CHRISTINA L. BALL
CHRISTOPHER J. WALKER
JENNY L. PANKO
HAZEL G. RODRIGUEZ
ANDREW K. SMITH

Telephone (402) 475-1075

Fax (402) 475-9515

web page: www.baylorlaw.comSYRACUSE OFFICE
305 5TH STREET
SYRACUSE, NEBRASKAF. B. BAYLOR (1884-1967)
H. B. EVNEN (1905-1988)RETIRED
JOHN R. BAYLOROF COUNSEL
J. ARTHUR CURTISS

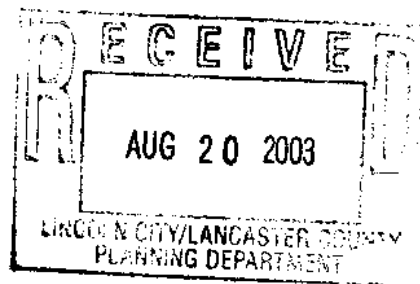
July 31, 2003

VIA CERTIFIED MAIL

Mr. F. Pearle Finigan
6321 A Street
Lincoln, NE 68510

RE: Bray/Finigan

Dear Mr. Finigan:



We represent Ms. Rochelle J. Bray of rural Lancaster County, Nebraska. Ms. Bray lives at the corner of North 84th Street and Bluff Road. Ms. Bray has lived and owned her home and the property around her home for the past sixteen years. As you know, her property is bordered on the North and East sides by farm ground owned by you.

For the past sixteen years, Ms. Bray has actually, continuously, notoriously, and adversely possessed all of the property surrounding her home up unto and including the tree line around her home on the North and East sides. In May 2003, she discovered survey posts within the tree line. Finding this to be odd, Ms. Bray called you and discovered that you are in the process of subdividing your farm property for future development. As you know, approximately one-half of an acre of your property falls within the tree-line that borders Ms. Bray's home on the North and East sides. During this telephone conversation you told Ms. Bray, "I want you to have the land." Thereafter, Ms. Bray made several attempts to contact you by phone, leaving messages with your wife, regarding the possibility of buying 5 acres of land from you and/or having you deed her ground that she has adversely possessed for sixteen years. To date, she has not heard from you and she has been forced to employ our services in this matter.

In Nebraska, a party claiming title through adverse possession must prove by a preponderance of the evidence that the adverse possessor has been in (1) actual, (2) continuous, (3) exclusive, (4) notorious, and (5) adverse possession under a claim of ownership through the statutory period of ten years. Ms. Bray has been in actual occupancy or possession of all of the land inclusive of the tree line around her home for sixteen (16) years, even constructing a dog kennel on this ground and using it for other personal uses. Ms. Bray has been in continuous possession for sixteen (16) years, never having moved away from the property in question. Ms.

Mr. F. Pearle Finigan

July 31, 2003

Page 2

Bray has been in exclusive possession of the property, with no other individual or entity, including yourself, having used the ground. And, Ms. Bray has been in notorious, visible and conspicuous possession of the ground within the tree line of her ground. The Nebraska Supreme Court has held that possession may be rendered open and notorious by planting groves or trees. *Wanha v Long*, 255 Neb. 849, 587 N.W.2d 531 (1998).

This case presents a textbook example of adverse possession, and we encourage you to visit with your legal counsel. We are confident that Ms. Bray would be successful in a quiet title action. However, the legal expense would be unnecessary for both yourself and Ms. Bray given the clear outcome. Additionally, Ms. Bray wants to continue to be a good neighbor.

Therefore, we propose that this matter be settled amicably with a new survey conducted reflecting a new property line, so that the one half acre of your property which Ms. Bray has actually, continuously, notoriously and adversely occupied for the last sixteen (16) years may be given to her and the title quieted. We would be willing to pay for one half of the costs of the survey and one half of all filing and/or closing costs that may be incurred.

We look forward to hearing from you or your attorney within the next fourteen (14) days. If we do not receive an answer, Ms. Bray will have no choice but to file a quiet title action in the District Court of Lancaster County. Govern yourself accordingly.

Very truly yours,

Andrew M. Loudon

For the Firm

E-mail: aloudon@baylorlaw.com

Direct Line (402) 458-2117

AML:jh/FiniganL1-Bray